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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,620	01/16/2004	Charles A. Eldering	T708-14	1665
27832 7590 06/12/2008 TECHNOLOGY, PATENTS AND LICENSING, INC./PRIME 2003 SOUTH EASTON RD SUITE 208 DOYLESTOWN, PA 18901				
EXAMINER CHIN, RICKY				
ART UNIT 2623		PAPER NUMBER		
MAIL DATE 06/12/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/759,620

**Applicant(s)**

ELDERING ET AL.

**Examiner**

RICKY CHIN

**Art Unit**

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 March 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-20, 22 and 23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-3, 5-20, and 22-23 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed March 14, 2008 with respect to claims 1-3, 5-20, 22, and 23 have been fully considered but they are not persuasive.

With respect to claims 1-3, 5-20, 22, and 23, applicant alleges that the combination of Safadi and Carles fail to teach or suggest the recited "selecting targeted advertisements for insertion...by comparing the intended target market characteristics to the subscriber characteristics and comparing the avail bandwidth to the minimum bandwidth requirements" Examiner respectfully disagrees.

In Carles, selection of targeted advertisements for insertion is done by comparing the intended target market characteristics to the subscriber characteristics. Refer to col. 3 lines 21-61 and col. 5 which states that the CMMS selects households to receive certain commercial messages based on the statistical information related to individual subscriber households and that each commercial message stored contains embedded information identifying the categories of recipients for the message. Therefore, Carles selects targeted advertisements for insertion by comparing the intended target market characteristics to the subscriber characteristics. Applicant also argues that Safadi teaches encoding a preselected advertisement to fit the bandwidth allocated for the program to which the advertisement belongs. This is possible through the use of compression circuitry present at the ad server for re-quantization as described in col. 6 lines 29-41). However, consider the embodiment of the system of Safadi

in which re-quantization at the ad server did not take place or exist as such as in the system of Carles, then cue tones which specify descriptive parameters pertaining to the program attributes that the commercial must match such as rate would have to result in a selection of an advertisement matching the rate by comparing available bandwidth to the bandwidth requirements of the advertisement in order for a successful insertion to occur.

Applicant also alleges that the combination of Safadi and Carles fails to teach or suggest "determining an avail bandwidth and subscriber characteristics for an advertisements opportunity within a program stream". Applicant argues by stating that Carles assigns advertisements to the addressable location of the subscriber and not based on determined subscriber characteristics for an advertisement opportunity within a program stream. Examiner respectfully disagrees.

Since the addressable location is part of information about a group of households defining its region (Carles, col.4 lines 5-8), it is known where the broadcast and opportunity are occurring and therefore subscriber characteristics will be that of the households defined in the particular region. Thus subscriber characteristics are determined for an advertisement opportunity within a program stream since it is known where the opportunity is occurring and the subscriber characteristics will be that of its region. Furthermore, Safadi teaches of encoding an advertisement to match the bandwidth of the stream and therefore the bandwidth of the avail is determined in order for a matching to result.

Applicant also alleges that the combination of Safadi and Carles fails to teach or suggest "receiving at least one request for advertisement presentation, the at least one request including advertisement characteristics". Applicant argues this point by arguing that Safadi and Carles require having pre-selected the advertisement to be presented prior to receiving the advertisement request. Examiner respectfully disagrees.

Safadi (col. 6 lines 29-41) teaches of the insertion command for a slice point whereby the commercial is then inserted. The cue command which may be provided well in advance, just before, or simultaneously with the splicing time can also be forwarded to the ad server for re-quantization before insertion. The cue command also includes descriptive parameters such as rate. Therefore, when re-quantization occurs just before or simultaneously with the splicing point and forwarded to the ad server, the re-quantized advertisement is being inserted based on a request, by the received cue command.

With respect to claims 19-20, applicant also alleges that the combination of Safadi and Carles fails to teach or suggest "determining a set of advertisements that can be inserted into the avail, wherein said determining is based on whether the avail bandwidth satisfies the minimum bandwidth requirements". Examiner respectfully disagrees.

As recited above with respect to the arguments regarding claims 1-3, the combination teaches wherein determining is based on comparing whether the avail bandwidth satisfies the minimum bandwidth requirements by requiring a certain rate to match as described in a parameter of the cue message (Safadi,

col. 6 lines 35-41). Furthermore, one advertisement can be construed as a set of advertisements such when there is only one advertisement that satisfies such bandwidth requirement. Thus, the combination of Safadi and Carles meet the limitation of determining a set of advertisements that can be inserted into the avail based on the satisfying bandwidth requirements.

With respect to claims 22- 23, applicant also alleges that the combination of Safadi and Carles fails to teach or suggest "determining if the minimum acceptable bit rate is greater than or less than the advertisement insertion opportunity bit rate". Examiner respectfully disagrees.

Applicant argues that in Safadi advertisements are always partially encoded. However, the advertisements may be partially encoded (col. 5 lines 26-28). Furthermore, independent claim 22 does not specify that the selection for insertion is determined by the bandwidth requirements as in claim 1 or 19. As so, Safadi discloses of determining if the minimum acceptable bit rate is greater than or less than the advertisement insertion opportunity rate in col.5 lines 26-34 during re-quantization to fit the bandwidth allocated for the program since the commercial content is being fit to the bandwidth allocated for the program. Thus, if the minimum acceptable rate is greater or lower than the advertisement insertion opportunity rate, then it must be known whether to re-quantize the rate to lower or higher values to fit the allocated advertisement insertion opportunity rate. For example, if the minimum acceptable rate is greater than the advertisement insertion opportunity rate, then it must be determined that the rate

Art Unit: 2623

must be re-quantized to lower values in order to be able to fit the allocated insertion opportunity rate.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims (1-3, 5-20, 22, and 23) are rejected under 35 U.S.C. 103(a) as being unpatentable over Safadi, US 6,487,721 in view of Carles, US 5,661,516.

Regarding claim 1, Safadi teaches a method for managing selection and insertion of advertisements which includes varying the quantization parameters to enable rate adaptation such that the commercial content fits the bandwidth allocated for the program to which the commercial belongs (See col. 5 lines 27-34 which discloses the rate adaptation and **Response to Arguments**). This would imply an assessment between the bandwidth requirement and the program stream (See **Response to Arguments** and col. 6 lines 38-40 which discloses descriptive parameters pertaining to the program attributes that the commercial must match, rate being one of them). Safadi, in the disclosed invention does not explicitly teach the receiving and selecting of advertisement characteristics which include intended target market characteristics.

However, Carles teaches of advertisements which include intended target market characteristics (See col. 3 lines 1-30 and **Response to Arguments**). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the disclosed invention of Safadi to include the teachings of Carles, for the added benefit of allowing a successful/quality insertion of a targeted advertisement with regards to available bandwidth and bandwidth requirements.

Regarding claim 2, which further limits claim 1, wherein said selecting targeted advertisements includes selecting advertisements having minimum bandwidth requirements in close proximity to the avail bandwidth (See col. 5 lines 27-34 of Safadi, which discloses rate adaptation). Thus, it would have been obvious of one of ordinary skill in the art at the time of the invention to have combined the teaching of Safadi and Carles for the benefit of allowing a successful/quality insertion of a targeted advertisement.

Regarding claim 3, which further limits claim 1, wherein said selecting targeted advertisements includes selecting advertisements having minimum bandwidth requirements less than or equal to the avail bandwidth (See col. 5 lines 27-34 of Safadi, which discloses rate adaptation). Thus, it would have been obvious of one of ordinary skill in the art at the time of the invention to have combined the teaching of Safadi and Carles for the benefit of allowing a successful/quality insertion of a targeted advertisement.



Regarding claim 5, which further limits claim 1, wherein said determining subscriber characteristics includes receiving node characteristics that are an aggregate of the subscriber characteristics for subscribers associated with a node. (See col. 3, lines 16-62 of Carles, wherein the conveyed information pertains to a group of households).

Regarding claim 6, which further limits claim 1; Safadi and Carles do not explicitly teach the available data as being public or private.

Official Notice is taken to note that at the time the invention was made, categorizing data, as being public or private for subscriber protection was well known in the art. It would therefore have been obvious for one of ordinary skill in the art to incorporate the desirable advantage of public and privately stored subscriber data.

Regarding claim 7, which further limits claim 6; Safadi and Carles do not explicitly teach of the publicly available data that includes real estate records and tax assessment records. However, it would have been obvious for one of ordinary skill in the art at the time of the invention to modify the parameters utilized to include such data, as a matter of preference, at least for the desirable benefit of more accurately describing the user.

Regarding claim 8, which further limits claim 1, wherein said determining

Art Unit: 2623

subscriber characteristics includes receiving subscriber characteristics associated with a group of subscribers. (See col. 3, lines 16-62 of Carles, wherein the conveyed information pertains to a group of households).

Regarding claim 9, which further limits claim 1, further comprising retrieving avail characteristics, wherein said selecting targeted advertisements includes comparing the intended target market characteristics and the avail characteristics (See col. 6 lines 38-40 of Safadi, which includes descriptive parameters pertaining to the program attributes that the commercial must match).

Regarding claim 10, which further limits the system of claim 1, wherein the intended target market characteristics include demographics. (See col. 5, lines 1-30 of Carles, which refers to demographics)

Regarding claim 11, which further limits claim 10, wherein a probabilistic distribution is assigned to various demographic attributes. (See col. 5, lines 1-45 of Carles, which refers to weighting on a statistical analysis).

Regarding claim 12, which further limits claim 1, further comprising inserting the targeted advertisement into the avail. (See claim 1 and Abstract of Carles)

Regarding claim 13, which further limits claim 12, further comprising delivering the advertisement to at least some subset of the subscribers. (See

**Abstract and col.5 of Carles)**

Regarding claim 14, which further limits claim 13, wherein the subset includes individual subscribers. (See Abstract and col. 5 of Carles)

Regarding claim 15, which further limits claim 13, wherein the subset includes a group of subscribers. (See Abstract and col. 5 of Carles)

Regarding claim 16, which further limits claim 15, wherein the group of subscribers are generated based on connectivity. (See Abstract and col. 5 of Carles)

Regarding claim 17, which further limits claim 13, wherein the subscribers include at least some subset of individuals, households, and groups. (See Abstract and col. 5 of Carles)

Regarding claim 18, which further limits claim 1, Safadi teaches of a multiplexed stream (See col.3 lines 38-50 of Safadi, which discloses that a plurality of single video program transport streams may be multiplexed into a multi-program transport stream, and the multi-program transport stream forwarded to the commercial inserter).

Regarding claim 19, claim limitations have been analyzed and rejected with regards to claims 1-3. Also refer to **Response to arguments**.

Regarding claim 20, claim limitations have been analyzed and rejected with regards to claim 18-19.

Regarding claim 22, claim limitations have been analyzed and rejected with regards to claims 1-3. Furthermore, acceptable format is dependent upon the operator and viewer and sufficient level of comparison can be any level depending on how the level is gauged (Also see Carles col. 8 and **Response to arguments**.)

Regarding claim 23, which further recites claim 22, further comprising halting the insertion of the digitally compressed advertisement when the minimum acceptable bit rate is greater than the advertisement insertion opportunity bit rate (See col. 6 lines 10-15 of Safadi, which discloses that the status of the inserter may be monitored and detected to determine if an error has occurred). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to have deemed the above situation as an error and halted an insertion for the benefit of preventing a possible overload.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### **Contact**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ricky Chin whose telephone number is 571-270-3753. The examiner can normally be reached on M-F 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Koenig can be reached on 571-272-7296. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public

Art Unit: 2623

PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Ricky Chin/  
Patent Examiner  
AU 2623  
(571) 270-3753  
[Ricky.Chin@uspto.gov](mailto:Ricky.Chin@uspto.gov)

/Andrew Y Koenig/  
Supervisory Patent Examiner, Art Unit 2623